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MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Kubler, et al.	:	
Application No. 10/783,572	:	DECISION ON APPLICATION
Filed: February 20, 2004	:	FOR
Atty Docket No.101. 14364US09	:	PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. § 1.705)" filed January 12, 2011, which is properly treated under 37 CFR 1.705(b). Applicant request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from one thousand and four (1,004) days to one thousand, twenty-four (1,024) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the patent term adjustment determination at the time of the mailing of the notice of allowance is **1,024 days**. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

On December 10, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1,004 days. Applicant timely filed the instant application for patent term adjustment.¹

Applicant asserts that the patent term should be adjusted by an additional 20 days pursuant to 37 CFR 1.702(a)(2) and 37 CFR

¹ PALM finance records indicate the issue fee was paid on January 12, 2011.

1.703(a)(2) for the Office's failure to respond within four months to a reply filed September 2, 2008.

Applicant's argument is supported by a review of the file record. It is noted that a reply was filed September 2, 2008, and an Office action was mailed responsively on January 22, 2009. It is also noted that the Notice Requiring Excess Claim Fees mailed October 16, 2008, does not toll any time period pursuant to 37 CFR 1.702(a)(2). The Office action mailed on January 22, 2009, is the Office action under 35 U.S.C. 132 that should have been used in the calculation of the period of adjustment under 37 CFR 1.702(a)(2). 37 CFR 1.703(a)(2) provides that:

The period of adjustment under § 1.702(a) is the sum of the following periods:

The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing if either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, which ever occurs first[.]

Accordingly, the period of Office delay pursuant to 37 CFR 1.703(a)(2) began January 3, 2009, and ended on January 22, 2009, with the mailing of the Office Action. Thus, a period of adjustment of 20 days will be entered for Office delay pursuant to 37 CFR 1.703(a)(2).

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 1,024 days (1,136 (1,077 + 20 + 39) days of Office delay - 112 days of applicant delay).

The \$200.00 fee set forth in 37 CFR 1.18(e) was received on January 12, 2011. No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10783572

Search:

Explanation of PTA Calculation

Explanation of PTE Calculation

PTA Calculations for Application: 10783572

Application Filing Date	02/20/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	1116
A Delays	1116	PTO Manual Adjustment	20
B Delays	0	Applicant Delay (APPL)	112
C Delays	0	Total PTA (days)	1024

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
108	02/24/2011		P028	Adjustment of PTA Calculation by PTO	20	0	
100	12/10/2010		MN/=.	Mail Notice of Allowance		0	
99	12/08/2010		IREV	Issue Revision Completed		0	
98	12/08/2010		N/=.	Notice of Allowance Data Verification Completed		0	
97	12/08/2010		DVER	Document Verification		0	
96	12/06/2010		CNTA	Allowability Notice		0	
90	11/03/2010		FWDX	Date Forwarded to Examiner		0	
89	10/29/2010		A...	Response after Non-Final Action		0	
88	09/14/2010		MCTNF	Mail Non-Final Rejection		0	
87	09/13/2010		CTNF	Non-Final Rejection		0	
86	06/29/2010		FWDX	Date Forwarded to Examiner		0	
85	06/25/2010		A...	Response after Non-Final Action		0	
84	03/25/2010		MCTNF	Mail Non-Final Rejection		0	
83	03/24/2010		CTNF	Non-Final Rejection		0	
82	02/22/2010		FWDX	Date Forwarded to Examiner		0	
79	02/22/2010		ABN9	Disposal for a RCE / CPA / R129		0	
81	02/18/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	
80	02/18/2010	01/06/2010	RCEX	Request for Continued Examination (RCE)		43	75
78	02/18/2010		XT/G	Request for Extension of Time - Granted		0	
77	02/18/2010		BRCE	Workflow - Request for RCE - Begin		0	
76	10/06/2009		DOCK	Case Docketed to Examiner in GAU		0	
75	10/06/2009	08/28/2009	MCTFR	Mail Final Rejection (PTOL - 326)	39	72	
74	10/01/2009		CTFR	Final Rejection		0	
73	07/16/2009		FWDX	Date Forwarded to Examiner		0	
72	04/28/2009	04/22/2009	A...	Response after Non-Final Action		6	70
71	04/28/2009		XT/G	Request for Extension of Time - Granted		0	
70	01/22/2009		MCTNF	Mail Non-Final Rejection		0	
69	01/21/2009		CTNF	Non-Final Rejection		0	
64	10/24/2008		FWDX	Date Forwarded to Examiner		0	
68	10/20/2008		IDSC	Information Disclosure Statement considered		0	
66	10/20/2008		RCAP	Reference capture on IDS		0	
65	10/20/2008		M844	Information Disclosure Statement (IDS) Filed		0	
62	10/20/2008		WIDS	Information Disclosure Statement (IDS) Filed		0	
61	10/16/2008		MNFEE	Mail Notice of Required Fees Due		0	
60	10/10/2008		NFEE	Fee (additional) Due Notice		0	
59	10/09/2008		FWDX	Date Forwarded to Examiner		0	
54	10/05/2008		DOCK	Case Docketed to Examiner in GAU		0	
63	09/02/2008		FEE.	Fee Payment Recorded (fees filed separately e.g. not with original papers, etc).		0	
58	09/02/2008	07/01/2008	A...	Response after Non-Final Action		63	50
57	09/02/2008		XT/G	Request for Extension of Time - Granted		0	
53	08/28/2008		DOCK	Case Docketed to Examiner in GAU		0	
67	07/17/2008		IDSC	Information Disclosure Statement considered		0	
56	07/17/2008		RCAP	Reference capture on IDS		0	
55	07/17/2008		M844	Information Disclosure Statement (IDS) Filed		0	
52	07/17/2008		WIDS	Information Disclosure Statement (IDS) Filed		0	
50	04/01/2008	04/20/2005	MCTNF	Mail Non-Final Rejection	1077	0.5	
49	03/29/2008		CTNF	Non-Final Rejection		0	
40	02/19/2008		DOCK	Case Docketed to Examiner in GAU		0	
39	10/17/2007		W525	Withdraw Flagged for 5/25		0	
38	10/16/2007		DOCK	Case Docketed to Examiner in GAU		0	
37	10/15/2007		F525	Flagged for 5/25		0	
41	08/23/2007		IDSC	Information Disclosure Statement considered		0	
36	08/23/2007		RCAP	Reference capture on IDS		0	
35	08/23/2007		M844	Information Disclosure Statement (IDS) Filed		0	
34	08/23/2007		WIDS	Information Disclosure Statement (IDS) Filed		0	

33	06/14/2007	DOCK	Case Docketed to Examiner in GAU	0
32	06/14/2007	DOCK	Case Docketed to Examiner in GAU	0
42	11/16/2006	IDSC	Information Disclosure Statement considered	0
31	11/16/2006	RCAP	Reference capture on IDS	0
30.7	11/16/2006	M844	Information Disclosure Statement (IDS) Filed	0
30	11/16/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
43	10/19/2006	IDSC	Information Disclosure Statement considered	0
29	10/19/2006	RCAP	Reference capture on IDS	0
28.7	10/19/2006	M844	Information Disclosure Statement (IDS) Filed	0
28	10/19/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
27	10/18/2006	DOCK	Case Docketed to Examiner in GAU	0
26	10/17/2006	DOCK	Case Docketed to Examiner in GAU	0
25	10/05/2006	DOCK	Case Docketed to Examiner in GAU	0
44	06/23/2006	IDSC	Information Disclosure Statement considered	0
24.7	06/23/2006	M844	Information Disclosure Statement (IDS) Filed	0
24	06/23/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
23	05/15/2006	A.PE	Preliminary Amendment	0
45	05/05/2006	IDSC	Information Disclosure Statement considered	0
22	05/05/2006	RCAP	Reference capture on IDS	0
21.7	05/05/2006	M844	Information Disclosure Statement (IDS) Filed	0
21	05/05/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
20	03/21/2006	DOCK	Case Docketed to Examiner in GAU	0
19	01/27/2006	DOCK	Case Docketed to Examiner in GAU	0
18	05/16/2005	DOCK	Case Docketed to Examiner in GAU	0
17	04/09/2005	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
16	04/09/2005	DOCK	Case Docketed to Examiner in GAU	0
11	11/08/2004	COMP	Application Is Now Complete	0
14	11/05/2004	WROIPE	Application Return from OIPE	0
13	11/05/2004	ROIPE	Application Return TO OIPE	0
12	11/05/2004	WROIPE	Application Return from OIPE	0
10	11/05/2004	ROIPE	Application Return TO OIPE	0
9	11/05/2004	OIPE	Application Dispatched from OIPE	0
8	11/05/2004	COMP	Application Is Now Complete	0
7	11/01/2004	ADDFLFE	Additional Application Filing Fees	0
6	11/01/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
5	09/02/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	08/27/2004	L194	Cleared by OIPE CSR	0
3	08/27/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	03/09/2004	SCAN	IFW Scan & PACR Auto Security Review	0
15	02/20/2004	A.PE	Preliminary Amendment	0
1	02/20/2004	IEXX	Initial Exam Team nn	0
0.5	02/20/2004	EFILE	Filing date	0

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